

The Research Review is a publication of the Research Division of the Tennessee House of Representatives

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## This Week in the House:

- **SREB Makes Presentation Before House & Senate Education Committees**
- **DCS Responds to Monitor's Audit of Foster Care**
- **Finance Discusses Streamline Sales & Use Tax Interstate Agreement**

### **Agriculture**

*Ryan Swindell*

The **Agriculture Committee** met Tuesday with two bills on the calendar. **HB251** by Rep. Casada was recommended to Calendar & Rules with one amendment. This bill, as amended, exempts bee hobbyists who sell less than 150 gallons of honey per year from regulations applicable to other retail food stores. **HB258** by Rep. Shepard was rolled for one week. This bill clarifies that the proper local authorities may seize any dog that is found running at large. When a dog is not under the control of the owner and is off the premises of the owner it is considered to be running at large.

Upon the conclusion of the calendar

a presentation was made by Dr. Jack H. Britt, Vice President for Agriculture at the University of Tennessee. Dr. Britt pointed out the importance of the Agro-Forestry industry in Tennessee, which accounts for 21% (\$57 billion) of the state's economy. Agriculture accounts for 68% of the Agro-Forestry industry while forestry accounts for 32%. To break it down further, the primary agriculture economic impact on the state is \$5.4 billion. These include items such as crops, livestock, and greenhouses and nurseries. The primary forestry economic impact on the state is \$6.3 billion, attributed to items such as pulp and paper, and to sawmill and logging.

Dr. Mark Windham spoke on dogwood trees in Tennessee, stating that Tennessee ranks number one in the U.S. in production.  
*(continued)*

## **Agriculture, cont.**

Most of the dogwoods that are produced in Tennessee come from Franklin County. New dogwood trees are being produced that are disease resistant and orders for them are coming from as far away as Germany and Japan. Dr. Neil Rhodes also made a presentation on the impact and developments in soybean breeding in Tennessee.

## **Children & Family Affairs**

*Shannon Romain*

The full **Children and Family Affairs Committee** and the **Domestic Relations Subcommittee** met this week. The **Family Justice Subcommittee** was cancelled.

The **Domestic Relations Committee** met Wednesday morning. The committee referred **HB 0068** (Rep. Patton) to the full committee. Current law requires couples to obtain pre-marital counseling in order to receive a discount on the marriage license fee. If adopted as amended, the bill will extend the list of premarital preparation courses that couples may take prior to marriage.

In the **full committee**, Commissioner Michael Miller of the Department of Children's Services appeared before the legislators to address recent reports that the Department was unable to locate foster children. He and members of his staff answered questions and demonstrated the process for inputting information in the TNKIDS foster care database.

According to the Commissioner, the Department can verify the placement of every child in foster care. The TNKIDS database represents the official documentation of every child, however, the problem is that it is not up to date or that information has been inaccurately entered. From the departmental standpoint, the inaccuracies can be attributed to the "on-going tension between people work and paperwork".

The Department has ordered an accounting of all children in the program. After the location of every child has been verified and the database has been reviewed and corrected, the goal of the department is: 1) additional staff training on the administrative process of tracking children; 2) to increase the number of cases reviewed each month by 10%, and 3) closer, more frequent supervision of the accuracy of TNKIDS data.

An official report on the verifications must be submitted to the federal monitor by March 5. The committee has requested copies of the report for each member.

## **Commerce**

*Denise Sims*

The **Commerce Committee**, the **Utilities and Banking Subcommittee** and the **Small Business Subcommittee** had no bills on notice and did not meet this week.

The **Industrial Impact Subcommittee** met on Tuesday with one bill on calendar. Rep. Mike Turner rolled HB 0022 for two weeks to obtain additional information. The bill prohibits insurance companies which conduct business in this state from escalating premiums, or canceling, non-renewing or declining property or casualty policies based primarily on credit rating or history.

## **Conservation & Environment**

*Greg E. Adkins*

The **Full Environment Committee** met on Tuesday, February 25, 2003 and listened to two speakers from the Department of Agriculture. Mike Countess presented the Southern Forest Resource Assessment Report from the USDA Forest Service. The report detailed assessments regarding the status and likely future of forests in the Southern part of the United States. The report included information regarding changes to the region's forests brought about by rapid urbanization, increasing timber demands, increasing numbers of satellite chip mills, forest pests, and changing air/water quality. Overall, the report concludes that forests in the Southeastern region will decrease. The committee also listened to Steve Scott, Chief Forester, concerning the Tennessee forest certification program that effects approximately 160,000 acres of state forest areas.

The **Conservation and Wildlife Subcommittee** met on Tuesday, February 25, 2003 but didn't consider any bills. The committee heard from the Assistant Director of the Tennessee Wildlife Resources Agency (TWRA), Allen Gebhardt. Mr. Gebhardt gave an overview of the Department for new committee members. TWRA is one of the largest landowners in Tennessee, and it is run by a thirteen-member board. The board approves the TWRA

budget, hires and fires the director, and sets hunting dates. The Department is completely self-sufficient and receives no general fund dollars, with exception of the Wetland Acquisition Fund.

## **Consumer & Employee Affairs**

*Shannon Romain*

The **Consumer and Employee Affairs Committee** met this week. In the Consumer Affairs Subcommittee, **HB 0033** (Rep. Hargrove), was unanimously referred to the full committee. The bill transfers regulation of unsolicited commercial faxes from the Department of Commerce and Insurance to the Tennessee Regulatory Authority.

There are several advantages of the change. Now all laws pertaining to unsolicited faxes will be contained in one section of the Tennessee Code Annotated. The bill also requires unsolicited fax ads to include a statement containing the word "unsubscribe" and information such as a valid return address, a toll free number, and a return fax address for recipients who do not wish to receive future unsolicited advertisements.

The bill gives the TRA broad regulatory powers. It permits the agency to issue cease and desist orders, investigative demands and subpoenas, and to conduct hearings and administer oaths. Currently, the Authority may impose a fine from \$100 - \$500 for each violation. The legislation raises the civil fines up to \$2000 for each violation. All revenues from fines will go into the state's public utilities account.

The fiscal impact of the legislation to state expenditures and revenues is expected to be insignificant. Estimates assume an increase in expenditures as a result of the investigative and enforcement provisions in the legislation. However, based on the number of complaints filed in 2002, both expenditures and revenues will be insignificant, even with the dramatic increase in the amount of the fine that may be imposed.

Rep. Hargrove informed the committee that he was unsure of the impact of the legislation on out-of-state companies. He did, however, assure members that, if enacted, the law would have no effect on communications by members of the legislature.

The full committee met yesterday morning to hear from Larry Wallace, the director of the Workers Compensation Fraud Unit of the Tennessee Bureau of Investigation (TBI). The Unit was created in 1997 to prevent, detect,

investigate and report claims of workers compensation fraud to law enforcement agencies and to the Department of Labor and Workforce Development. Mr. Wallace surprised members of the committee by announcing that the Bureau was requesting that legislators shut down the unit by repealing the 1996 laws that created it.

According to Mr. Wallace, in order to achieve the 9% budget cuts ordered by the administration, TBI was eliminating twenty field positions in other critical areas within the bureau. Ten of those positions handle violent crimes and will be filled by agents from the fraud unit. The bureau could not offer the committee any monetary figures, for example the amount of money returned to insurance companies and employers from civil penalties or restitution, that might support either maintaining or closing the unit. According to a unit staff member, it has been determined that the cost of savings from workers compensation fraud is not significant enough to justify continuing the unit. The state would save more money by shutting it down.

Budget cuts aside, according to Mr. Wallace the reality of the situation is that the unit has been unsuccessful in obtaining fraud convictions. Since its inception in 1997, the unit accredits 26 convictions to its efforts, all of which resulted from guilty pleas. Wallace attributed the lack of success to the low priority placed on white-collar crimes.

According to TBI director, Ron Reed, district attorneys across the state do not prosecute workers compensation fraud cases for a number of reasons. First, a higher priority is placed on violent crimes. Second, attorneys are unfamiliar with white-collar crimes. The cases are time consuming and the intent element necessary for a conviction is difficult to prove. In addition to a criminal trial, there is always a civil trial which requires a lower burden of proof. If the burden of proof cannot be met in the civil trial, which is generally conducted first, there is little hope that a higher burden can be met in a criminal trial. Finally, even if the state wins the civil case, the district attorneys are reluctant to prosecute if they feel the civil remedy imposed is adequate.

Mr. Wallach assured members that the bureau will continue to investigate workers compensation fraud with, or without, the unit. He pointed out that other states are facing similar issues as the number of claims rise across the nation. In response, some states have appointed a special district attorney or attorney general to handle white-collar crimes, especially workers compensation fraud.

Collectively, the committee expressed their concern that the prosecution of fraudulent claims will continue to drop in priority after the demise of the unit. Prior to convening, Chairman Ben West assured the bureau that the committee will meet with the District Attorneys Counsel to stress the importance of placing a priority on prosecuting fraudulent claims.

## **Education**

*Pam Mason*

The **House Education Committee** considered one bill at its Wednesday meeting. **HB 297** (Windle) allows a school term to be reduced by up to five days in the 2002-2003 school year if declared a federal disaster area. Following explanation of the fiscal note, i.e., that there would not be a significant decrease to local governments, the bill was passed to the Calendar and Rules Committee.

The **House and Senate Education Committees** met jointly on Wednesday morning to hear a report from the Southern Regional Education Board (SREB) on Goals for Education in Tennessee.

Mark Musick, President of SREB, introduced Lynn Cornett, Vice President/State Services, who addressed Tennessee's status as to its goals and its comparison to other states both in the SREB states and the nation as a whole.

Gale Gaines, Associate Director/ State Services, next addressed the committees on a lottery and teacher salaries in the SREB states.

Copies of materials from this presentation may be obtained from the House Education office.

## **Higher Education Subcommittee**

The Higher Education Subcommittee met on Tuesday. **HB 28** (Turner, M) was presented in committee. This legislation would prohibit institutions of higher education from applying more stringent rules on sororities than fraternities. The Subcommittee recommended the bill to the full committee.

Dr. Rich Rhoda, Executive Director of the Tennessee Higher Education Commission, spoke on revisions to the 2000-2005 Master Plan on Higher Education. The purpose of the Plan is for public higher education institutions to position themselves to maintain the highest level of academics and quality given current conditions of funding austerity. There are a number of areas being revisited in

the Plan and under development. Dr. Rhoda was asked to return throughout the session to keep the subcommittee updated as to these developments.

A copy of the Revision may be obtained by contacting the House Education office.

The **K-12 Subcommittee** did not meet this week.

## **Finance, Ways & Means**

*Cathy Higgins*

There were no bills on calendar this week in the **Finance Committee**. However, the full committee met to hear presentations regarding the Streamline Sales and Use Tax Interstate Agreement.

Presenters:

- Commissioner Loren Chumley, Department of Revenue;
- Neal Osten, National Conference of State Legislatures, Director of Communications and Interstate Commerce; and
- Dr. William Fox, University of Tennessee Center for Business and Economic Research

The Streamline Sales and Use Tax Interstate Agreement is the culmination of three years of work by the National Conference of State Legislatures, state governments, businesses, manufacturers, retailers, on-line retailers and others. These groups have been meeting to develop model legislation that will change existing sales and use tax systems, and implement a new, simplified system that will accommodate interstate commerce and adapt itself to the growth of electronic commerce. Two earlier U.S. Supreme Court decisions, *Bellas Hess* and *Quill*, ruled that states cannot require out-of-state vendors to collect sales tax unless those vendors have some physical presence (nexus) in the state and that it would burden interstate commerce to require remote vendors to learn the complex sales tax laws existing in all states.

Tennessee has been involved since the beginning of the discussions and was a member of the initial Task Force on State and Local Taxation of Telecommunications and Electronic Commerce. The product of this task force was the model legislation referred to as the Streamlined Sales and Use Tax Agreement. Tennessee adopted the legislation required to participate in 2001 (PC 312) along with 30 plus states. Adoption of that language was the prerequisite to participate in the process to formalize the

final interstate agreement - referred to as the Streamline Sales and Use Tax Interstate Agreement (SSUTA).

Commissioner Chumley advised the members that in 2002, online sales increased by an estimated 50% over 2001 and that most on-line and catalog retailers are not collecting Tennessee sales tax. The state does not have an enforcement mechanism because most of these purchases are from out-of-state vendors that do not have nexus in Tennessee.

According to research by Forrester Research, Inc., in 2001 nationally electronic commerce (e-commerce) sales totaled \$754.6 billion, in 2002 \$1,225.5 trillion, and in 2003 1,905.6 trillion. According to Dr. Fox, Tennessee's loss is close to \$300 million alone in "new revenue growth" and \$600 million total revenue loss. The majority of these sales are business-to-business

**National E-Commerce Sales  
(Forrester Research)**

2001	\$ 754.6 Billion
2002	\$1,225.5 Trillion
2003	\$1,905.6 Trillion

transactions and are primarily from professional type companies (law firms, doctors' offices, small accounting firms) that are not usually audited by tax departments due to lack of resources within the departments. E-commerce also puts "main street" businesses at a competitive disadvantage which may affect local communities if businesses shut down.

The tremendous growth in e-commerce sales, and complex sales and use tax systems was the catalyst for the development of the Streamline Sales and Use Tax Agreement Interstate Agreement (SSUTA). Neal Osten advised that states would need to change some existing laws to conform to the SSUTA. This will require some changes as it relates to the use of uniform definitions, uniform rounding rule, uniform audit procedures, returns/remittances, exemptions, returns, elimination of multiple rates, caps and thresholds, etc. Four states have already passed conforming legislation (Minnesota, North Carolina, South Dakota, and Wyoming) and many states, including Tennessee, are introducing conforming legislation.

It was stressed that any state that adopts the legislation will not lose its sovereignty and will still decide what to tax, what to exempt, and the rate. The agreement is a voluntary system, and states that conform want retailers to sign up voluntarily to collect the taxes under the system. Once the systems are established that remove the burden that collection of taxes imposes on interstate commerce, the issue will be brought to Congress for federal legislation or to the Courts to overturn the *Quill* decision.

## **Budget Subcommittee**

Budget Sub had four bills on calendar this week.

HBs 0052 and 0055 by Rep. Mike Turner were taken off-notice at his request. HB 0168 by Rep. George Fraley was placed behind the budget.

HB 0208 by Rep. Mike Turner was rolled four weeks. This legislation would decouple Tennessee's estate tax from the federal estate tax and prevent the loss of state revenue from the phasing out of the federal estate tax.

## **Government Operations**

*Denise Sims*

The House **Government Operations Committee** referred **HB 0442** (Bowers) to the Health and Human Resources Committee after reviewing the bill on Tuesday. The bill calls for the Department of Health to collect data on sepsis (the body's response to infection).

The committee then continued its review of **HB 0001**, the lottery bill. Members first heard from Richard Gurley, Associate Legislative Research Analyst with the Comptroller's Office. The Comptroller's Office of Research has completed a report, "Building Tennessee's Lottery: Considerations for Policymakers." Rep. Newton, the House sponsor, then spoke to the bill and its amendment. Some of the questions from committee members concerned:

- 1) ..the possibility that lawmakers may have to resort to tapping the general fund if problems arise in the future (i.e., if the program outpaces lottery funding).
- 2) ..the make up of board members and appointees.
- 3) ..VLTs (video lottery terminals) and the compulsive gambling issue.
- 4) ..working out details of the educational component before the implementation component.

There were other questions and concerns addressed.

The lottery legislation is in three parts: the 501(c)(3) component, the scholarship or educational component, and the implementation component. Government Operations is charged with reviewing the implementation section.



*Rep. Newton (File Photo)*

Next week, Attorney Doug Himes of the Assembly's Legal Services Department will go through the text of the lengthy amendment with committee members, and Richard Gurley will return after members have had a chance to finish reading the research report.

## **Health & Human Resources**

*Judy Narramore*

The **Health & Human Resources Committee** heard two presentations at its Tuesday meeting. Nan Allison, representing the Tennessee Dietetic Association, spoke to the committee about nutritional issues facing Tennesseans, particularly obesity in school-age children. Rep. Shepard, Roger Davis, and Tim Tucker, all representing the Tennessee Pharmacists Association, gave a brief presentation on TennCare and prescription usage, with particular emphasis on issues surrounding a broad-based, single formulary model.

The **Mental Health Subcommittee** held its first meeting of 2003 on Tuesday afternoon with one bill on notice that was referred to full committee. **HB 0593** by Rep. Bowers as amended would increase the number of mentally retarded and developmentally disabled persons served by the Department of Mental Health and Developmental Disabilities and expand the support services provided by the Department. The bill would require the Department to make home and community-based support programs available to eligible persons, including those on the waiting list. Implementation of the provisions of this bill would be subject to funding in the General Appropriations Act. The amendment corrects a typographical error in the printed bill.

Two bills were on notice for the first meeting of the **Professional Occupations Subcommittee** Wednesday morning. **HB 0585** by Rep. Shepard, which would authorize RNs to determine and pronounce death of hospitalized patients under certain circumstances, was referred to full committee. **HB 0531** by Rep. Davis, which would allow podiatrists to order home health services for their patients, was referred to full committee.

The **Public Health & Family Assistance Subcommittee** met Wednesday morning with three bills on its first calendar. **HB 0669** by Rep. M. Turner, which would enact the "Consumer Protection Act for Wheeled Mobility," was discussed and rolled one week pursuant to the sponsor's request to bring an amendment. **HB 0434** by Rep. Patton concerning registration of automated external defibrillators

was rolled one week at the request of the sponsor. **HB 0025** by Rep. M. Turner concerning testing of newborns for glucose levels was taken off notice.

The **Health Care Facilities Subcommittee** was scheduled to meet on Wednesday morning with two bills on the calendar: **HB 0544** by Rep. Ferguson and **HB 0264** by Rep. Shepard. However, the respective sponsors rolled both bills and the meeting was canceled.

## **Judiciary**

*Paige Edwards*

### **Criminal Procedure & Practice Subcommittee**

On Tuesday, the **Criminal Procedure & Practice Subcommittee** met to consider five bills. **HB 433** by Representative Patton was rolled for one week. **HB 29** by Representative Turner (Davidson) was rolled for two weeks. **HB 535** by Representative Patton was taken off notice.

**HB 167** by Representative Fraley was referred to the House Judiciary Summer Study Committee. This bill would authorize any public school principal, principal-teacher, or assistant principal to review juvenile court records and files. These individuals would determine whether a child is legally charged with a felony and if the child's continued presence in school poses a danger to persons or property or disrupts the educational process.

**HB 34** by Representative Turner (Davidson) was sent to the full committee. This bill would increase the penalty and modify the age requirements to constitute child endangerment under the Drunk Driving Protection Act. Under present law, a person who drives an automobile or vehicle under the influence of drugs or alcohol with a child under 13 years of age commits child endangerment. This offense is a Class A misdemeanor punishable by a mandatory minimum incarceration of 30 days and a \$1,000 minimum fine.

Under this bill, a person commits child endangerment when such person drives an automobile or vehicle under the influence of drugs or alcohol with a child under 16 years of age. The penalty for committing this offense is a Class A misdemeanor punishable by a mandatory minimum incarceration of 11 months and 29 days with a \$1,000 minimum fine. The incarceration and fine would be in addition to any other incarceration and fine required

by law. Under this bill, the penalties for aggravated child endangerment and especially aggravated child endangerment remain the same as under present law.

The **Criminal Procedure & Practice Subcommittee** will designate one or two meetings to consider legislation relating to DUI offenses.

The subcommittee agreed to consider these bills at one time because of the volume of DUI legislation that has been filed. HB 535 by

Representative Patton will be heard at that time. Also, HB 34 by Representative Turner (Davidson) may be re-referred to the **Criminal Practice & Procedure Subcommittee** at the will of the full committee.

**Criminal Procedure and Practice Will Designate Meeting(s) Just For DUI Bills**

### **Constitutional Protections Subcommittee**

On Tuesday, the **Constitutional Protections Subcommittee** met to consider HB 438 by Representative Bowers. This bill would restore citizenship rights to convicted felons. The Corrections Oversight Committee is scheduled to consider this bill in March. Therefore, the subcommittee agreed to roll this bill for two weeks.

### **Judicial Administration Subcommittee**

On Tuesday, the **Judicial Administration Subcommittee** met to consider two bills. Both bills were sent to the full committee.

**HB 570** by Representative Fowlkes makes technical corrections that reflect the change from the "Code of Professional Responsibility" to the "Tennessee Rules of Professional Conduct." These rules govern the professional conduct of lawyers and judges.

**HB 572** by Representative Fowlkes imposes a moratorium on the creation of new municipal courts by the general assembly or home rule municipalities until the Tennessee Judicial Council makes a recommendation to the general assembly and the general assembly has had at least one session to consider the issue. Presently, the Tennessee Judicial Council has created a study committee to study municipal courts and make recommendations. Essentially, this bill will enable the general assembly to address issues that arise when municipal courts exercise concurrent jurisdiction and assume the responsibilities of general sessions court.

### **Civil Procedure & Practice Subcommittee**

On Wednesday, the **Civil Procedure & Practice Subcommittee** met to consider two bills. HB 182 by Representative Turner (Davidson) was rolled for three weeks.

**HB 571** by Representative Fowlkes was sent to the full committee. This bill would not require social security numbers to be submitted when a petition is filed to appoint a guardian.

### **Full Judiciary Committee**

On Wednesday, the **Full Judiciary Committee** met to consider one bill and five resolutions. Also, the committee heard a presentation from Mr. Donald Paine about the proposed amendments to the court rules and the rules of evidence. Likewise, Mr. David Jennings of the TBI updated the committee about the study committee that has been reviewing issues relating to the electronic recordings of custodial interrogations.

HR 0022 by Representative Fowlkes was rolled for one week. This resolution would approve amendments to the Tennessee rules of evidence promulgated by the supreme court.

The following items were sent to **Calendar & Rules**:

- **HB 0009** by Representative McMillan codifies the acts of 2002.
- **HR 0026** by Speaker Naifeh confirms the appointment of Nancy Miller-Herron to the Tennessee Claims Commission.
- **HR 0019** by Representative Fowlkes approves amendments to the Tennessee rules of appellate procedure promulgated by the supreme court.
- **HR 0020** by Representative Fowlkes approves amendments to the Tennessee rules of criminal procedure promulgated by the supreme court.
- **HR 0021** by Representative Fowlkes approves amendments to the Tennessee rules of civil procedure promulgated by the supreme court.

## **State & Local Government**

*Lawrence Hall, Jr.*

This week in the **State and Local Government** full committee, Commissioner Quinton White of the Department of Corrections appeared before the committee

to introduce himself and his staff, as well as to answer a few questions regarding the department.

The **State Government Subcommittee** heard two bills this week, HB 187 and HB 202, both by Rep. Turner of Davidson County. HB 187 would allow state purchasing officers to purchase materials on the open market that are included in a contract if such materials could be purchased at a cost savings. HB 202 would prohibit any person from bidding on a public contract if the bidding person's relative is a member of the board or commission that awards the contract. Both bills were rolled for two weeks.

Local Government considered **HB 529**, by Rep. Davis. This bill will allow a county to pay for the cremation expenses of a deceased pauper. The bill further requires verification of financial need made by an affidavit. This bill was passed to full committee. **HB 435**, by Rep. Hawk was also passed to full committee. This bill adds Greene County to the list of counties that are authorized to remedy dangerous conditions on owner-occupied lands.

**Elections Subcommittee** did not meet this week.

## **Transportation**

*Greg E. Adkins*

The **Full Transportation Committee** met on Wednesday, February 26, 2003 and considered two bills. **HB 275** by Rep. Wood passed to C&R with an amendment. The amended bill will require van accessible only parking spaces to be labeled "Van accessible only" and will further require that a sign be posted at a reasonable eye level in front of the parking space. **HB 414** by Rep. McKee passed to C&R. The bill deletes the requirement that certificates of registration be signed (note: the certificate of registration is not the title).

The **Public Transportation & Highways Subcommittee** met on Wednesday, February 26, 2003 and considered five bills.

The following four highway sign bills passed to Full Transportation Committee:

1. **HB 269** by Rep. Shepard--"Hickman County Veterans Highway" (Amendment--adds additional language to the sign)
2. **HB 276** by Rep. Wood--"Harrison Bay Parkway" (Amendment--makes the sign subject to local funding)
3. **HB 595** by Rep. Tidwell--"Tom J. Shaw Bridge"

4. **HB 596** by Rep. Tidwell--"Dr. Earl Salhany Memorial Highway"

**HB 661** by Rep. Brooks passed to full committee. The bill authorizes the issuance of Alpha Delta Pi Sorority new specialty earmarked license plates.